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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/782,650

02/12/2001

Arnold J. Levine

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05/08/2006

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EXAMINER

ANGELL, JON E

ART UNIT

PAPER NUMBER

1635

DATE MAILED: 05/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/782,650

Applicant(s)

LEVINE ET AL.

Examiner

Jon Eric Angell

Art Unit

1635

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 24 April 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 22 March 2006. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: 3,31 and 33.
Claim(s) rejected: 1,2,4-7,28-30,32 and 34-38.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER


11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☒ Other: See Continuation Sheet.


J.E. Angell PATENT EXAMINER

Continuation of 3. NOTE: The proposed amendment would narrow the scope of the claims to specific embodiments that were not previously specifically claimed. Specifically, the proposed amendment would change claim 1 such that will drawn to a chimeric molecule comprising a peptide angiogenic factor covalently linked to a targeting peptide comprising the targeting peptide sequence that is SEQ ID NO: 1-5 or a functionally equivalent peptide sequence wherein the functionally equivalent peptide sequence differs from the targeting peptide sequence by a single conservative amino acid sequence. Pending claim 1 is drawn to a chimeric molecule comprising a peptide angiogenic factor covalently linked to a targeting peptide comprising a sequence from the group consisting of SEQ ID NO: 1-5 and their functionally equivalent sequences having one or two conservative amino acid substitutions. Therefore, the instant claim has been narrowed in scope from any functionally equivalent sequence (i.e., any sequence that is functional equivalent of a sequence of SEQ ID NO: 1-5) that has one or two conservative amino acid substitutions, to any sequence that is SEQ ID NO: 1-5, including functionally equivalent sequences that differ from the targeting peptide sequence by a single conservative amino acid sequence. A search specifically for functionally equivalent peptide sequences that differ from SEQ ID NO:1-5 by a single conservative amino acid substitution has not been performed to date. Therefore, the proposed claim would require a new search and consideration for the functionally equivalent peptide sequences that differ from SEQ ID NO:1-5 by a single conservative amino acid substitution specifically claimed in proposed claim 1. Furthermore, proposed new claims 39-41, which depend from claim 3, are new claims which include limitations that have not specifically been previously searched or considered with respect to the specific limitations of claim 3. Therefore the proposed amendment would require further search and considerations with respect to new claims 39-41.

Continuation of 11. does NOT place the application in condition for allowance because: Applicants arguments are in view of the proposed amendment to the claims which has not been entered. Since the amendment has not been entered, Applicants arguments are not persuasive and the pending claims remain rejected for the reasons of record indicated in the 10/18/2005 Final Office Action.

Continuation of 13. Other: It is noted that an amendment was filed 4/17/06, to which the Examiner responded in the Advisory Action mailed 4/28/06. Applicants then filed another amendment with arguments on 4/24/06. The Examiner was unaware of the 4/24/06 amendment when the 4/28/06 Action was issued because the amendment was not forwarded to the Examiner until 4/29/06. This Action is in response to the communication filed 4/24/06.



JON ANGELL
PATENT EXAMINER